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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM N. WASHINGTON,

Defendant and Appellant.

B209020

(Los Angeles County  
Super. Ct. No. BA324564)

THE COURT:\*

William N. Washington (appellant) appeals from the judgment entered following a jury trial that resulted in his conviction of residential burglary (Pen. Code, § 459)<sup>1</sup> (count 1), identity theft (§ 530.5, subd. (a)) (count 2), possession of a forged driver's license (§ 470, subd. (b)) (count 3), and commercial burglary (§ 459) (count 4).

On count 1, the trial court sentenced appellant to the upper term of six years and an additional year for the allegation that the loss exceeded \$50,000 under former section 12022.6, subd. (a)(1). The trial court imposed concurrent sentences of two years (the midterm) on the remaining counts.

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\* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that he had been unable to find any arguable issues. On November 5, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. Appellant filed a timely supplemental brief. In it he contends: (1) the jury’s finding of intent in counts 1 and 4 did not have a basis in the evidence and was erroneous, and the true finding on the value allegation in count 1 was therefore invalid; and (2) the jury was not instructed to distinguish lesser standards of proof from the standard of beyond a reasonable doubt.

Appellant was arrested for the burglary of a home after his fingerprints were found on two televisions inside the home. The parties stipulated that over \$50,000 worth of property was taken. In an interview with Detective William Flannery of the Los Angeles Police Department, appellant eventually admitted being inside the home, but he claimed he had entered only after two companions forced him to do so under threat. Detective Flannery also questioned appellant about a subsequent incident where use of a charge card belonging to one of the burglary victims was attempted. Appellant said one of his fellow burglars went to the store with him and gave him the card to use. Detective Flannery stated that approximately 18 credit and identification cards bearing various names were found in appellant’s hotel room.

Appellant testified at his trial that he entered the burgled home only because he was scared for his life. His companion, a man named Nick, threatened his life and his family’s lives. Nick told him to help remove a wall-mounted television, but appellant was unable to dismount it. Nick also forced him to try to take another television from the house. Appellant was afraid of Nick because of Nick’s gang affiliation. A few days after the burglary, Nick picked up appellant and drove him to a shopping center. Nick told appellant to grab some things he wanted in a store, and Nick grabbed clothes also. Nick handed him the card and told him to pay with it. Nick gave appellant a threatening look. When the credit card was questioned, appellant separated the clothes he had chosen and paid for them in cash.

Appellant acknowledged that he was also questioned about use of the burglary victim's card in a Target store. Appellant said he went to Target with Nick because he was afraid Nick was going to kill him. He said he found a bag in his rental car, which Nick had borrowed, and appellant discovered later that the bag contained credit cards. Appellant admitted he was on probation for a 2004 conviction for vehicle theft and for a 2003 second-degree burglary conviction.

### **I. Sufficiency of the Evidence of Intent**

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal on this ground is unwarranted unless “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” (*People v. Bolin, supra*, 18 Cal.4th at p. 331.)

Section 459 states that “[e]very person who enters any house . . . , with intent to commit . . . any felony is guilty of burglary.” “While it is necessary for the prosecution in a burglary case to show that the defendant entered the premises with the requisite intent, such intent may be inferred from all the facts and circumstances disclosed by the evidence. Where the evidence is sufficient to justify a reasonable inference that such intent existed, the verdict may not be disturbed.” (*People v. Clark* (1968) 268 Cal.App.2d 293, 296.) “[S]uch intent is rarely susceptible of direct proof, and must, therefore, ordinarily be inferred from the facts and circumstances disclosed by the evidence [citations].” (*People v. Hinson* (1969) 269 Cal.App.2d 573, 577-578.) “In order for one to be charged as a principal for aiding and abetting it must be shown that he counseled, encouraged or assisted in the commission of a crime with knowledge that a crime was being committed.” (*In re Michael T.* (1978) 84 Cal.App.3d 907, 910.)

The trial court instructed the jury on the elements of burglary and on the manner in which a person may be guilty of a crime as either the direct perpetrator or as an aider and abettor. (CALCRIM Nos. 400, 401, 1700.) The trial court instructed the jury on the defense of duress with respect to the burglaries. (CALCRIM No. 3402.) The jury was instructed on how to judge the credibility of a witness, including the fact that they could consider a witness's conviction of a felony or other misconduct in evaluating credibility. (CALCRIM Nos. 226, 316.) The jury clearly did not believe appellant's version of events or his claim that he acted under duress and thus lacked the requisite intent to commit burglary. We believe there is sufficient evidence to support the verdicts, and we are bound by the jury's determination. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

## **II. Instruction on Burden of Proof**

Appellant contends that the very reason the jury found him guilty of the two burglary counts in the absence of sufficient evidence was that the jury was not explained the burdens of proof lesser to that of reasonable doubt. Without citation to authority, appellant asserts that the trial court's failure to sua sponte distinguish the two lower levels of proof as insufficient to convict amounted to an abuse of discretion.

At the outset, we note that appellant did not object below when the trial court instructed the jury with CALCRIM Nos. 103 and 220, defining reasonable doubt. Accordingly, appellant has waived his claim of instructional error on appeal. (*People v. Bolin, supra*, 18 Cal.4th at p. 326 [waiver found where defense counsel agreed to giving of instruction and raised no objection].)

Evidence Code section 502 provides: "The court on all proper occasions shall instruct the jury as to which party bears the burden of proof on each issue and as to whether that burden requires that a party raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, *or by proof beyond a reasonable doubt.*" (Italics added.) (See also *People v. Shelmire* (2005) 130 Cal.App.4th 1044, 1054.) "A trial court must instruct the jury on the allocation and

weight of the burden of proof [citations], and, of course, must do so correctly.” (*People v. Mower* (2002) 28 Cal.4th 457, 483-484.)

Due process requires only that the jury be instructed on the necessity that the defendant’s guilt be proved beyond a reasonable doubt. (*Victor v. Nebraska* (1994) 511 U.S. 1, 5.) Here, the trial court correctly instructed the jury on the requirement of proof beyond a reasonable doubt with CALCRIM Nos. 103 and 220. These instructions derive from former CALJIC No. 2.90, which has been found to comport with due process. (See *People v. Stone* (2008) 160 Cal.App.4th 323, 333-334.) Therefore, the trial court did all that it was required to do when instructing on the burden of proof, and appellant’s argument is without merit.

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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